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No. 553

May 27th 1957

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SUPREME COURT, U.S.

Decision of
The Supreme Court of Pennsylvania

Supreme Court of The United States
Washington, D. C.

Kathleen Fitzgerald Walsh
Appelant

vs

First National Bank & Trust Company
of Scranton, Pennsylvania
Appellee

Estate of
William J. Fitzgerald
Appeal Supreme Court of Pennsylvania
Philadelphia, Pennsylvania
No. 206 January Term 1957

October 9th 1957

Appeal

No. 206 January Term 1957

Estate of
William J. Fitzgerald
Deceased
1617 Madison Avenue
County of Lackawanna
Borough of Dunmore
Pennsylvania

Supreme Court of Pennsylvania
Philadelphia, Pennsylvania

First National Bank & Trust Company
of Scranton, Pennsylvania
Appellee

Kathleen Fitzgerald Walsh
Appellant

I, Kathleen Fitzgerald Walsh, sister of the late Attorney William J. Fitzgerald and sole immediate survivor, on April 16th 1957 appeared before The Supreme Court of Pennsylvania at Philadelphia, Pennsylvania and petitioned said Court to compel Attorney J. Desmond Kennedy, former law partner of Attorney William J. Fitzgerald to file an accounting in this Estate during the period in which he (Mr. Kennedy) acted as executor.

It had been definitely established that the said Attorney Kennedy acted as executor of this Estate for a period of time

I, also, petitioned the said Court to release The First National Bank & Trust Company of Scranton, Pennsylvania as Administrator C. T. A. of the Estate of Attorney Fitzgerald because of concealment and confiscation.

I stated, also, that Mr. Frank Green, Vice-President of The First National Bank & Trust Company of Scranton, Pennsylvania has never at any time shown me any of the securities held by my brother, the late Attorney Fitzgerald, or any of his insurance policies.

Mr. Frank Green misrepresented when he (Mr. Green) stated that Kidder, Peabody & Company and Reynolds Company Investment Brokers made all the transactions when as a matter of fact Benjamin, Morgan & Jones, a ficticious name and a unit organization of The First National Bank & Trust Company of Scranton, Pennsylvania has made these transactions.

I, informed the Court that policy number 125700 paid on the life of Attorney William J. Fitzgerald by The Canada Life Assurance Company has not been listed in the inventory of this Estate by the Administrator.

The Court was, also, informed by me that no United States Income Tax has been filed for the year of Nineteen Hundred and Fifty-Five (1955) in this Estate of Attorney Fitzgerald according to information received by me from the head of the Internal Revenue Bureau in Scranton, Pennsylvania.

I requested that if this Court saw fit to release The First National Bank & Trust Company of Scranton, Pennsylvania that I be appointed in their stead in order that I might make a thorough investigation of the Estate of my late brother, Attorney William J. Fitzgerald.

Attorney J. Desmond Kennedy, executor of the supposed will of Attorney William J. Fitzgerald, although Attorney Fitzgerald died under very mysterious circumstances in his home on October 17th 1955, saw fit to order the body of my brother the said Attorney William J. Fitzgerald sent to Cusick's Undertaking Establishment, 217 Jefferson Avenue, Scranton, Pennsylvania, without either my knowledge or consent, knowing full well that I was the said Attorney William J. Fitzgerald's sister and sole immediate survivor. My residence is within a ten minute drive and one minute by telephone from the residence of my deceased brother, Attorney William J. Fitzgerald. Notwithstanding this fact, I was not notified of my brother's death for over an hour and then informed that he (Attorney Fitzgerald) had died and his body had gone to the said Cusick Funeral Establishment. However, Attorney Kennedy did not notify me at any time..

When Mr. Walsh and I, later that evening, called at the Funeral Home we were informed that Attorney Kennedy had made arrangements to select a casket for Attorney Fitzgerald the following morning and designated the date of the Funeral and, also, that the said Attorney Kennedy was taking care of the public press. When notice of the death of the said Attorney William J. Fitzgerald came out in the said public press, later that night, my name was withheld as a survivor.

Over my protest, Attorney Kennedy, executor of the supposed will of Attorney William J. Fitzgerald, determined to carry out his hasty plan for the funeral arrangements, absolutely, refused to allow an additional day in order for me to contact my niece, Mary Jane Bartelt, of Chicago, Illinois, a legatee under the terms of the supposed will, in order that she (Mary Jane Bartelt) might attend the funeral of her deceased uncle, the late Attorney William J. Fitzgerald.

Judge Brady, of Orphans Court, Lackawanna County, Pennsylvania, erroed when he (Judge Brady) permitted Attorney Kennedy to act as executor without having qualified.

The Supreme Court of Pennsylvania errored in upholding the decision of Judge Brady rendered October 5th 1956.

Attorneys J. Desmond Kennedy, and James O'Brien, former law partners of Attorney William J. Fitzgerald are now under investigation by the Board of Governance of the Pennsylvania Bar, Philadelphia, Pennsylvania. Also, under investigation by the Board of Governance is Attorney Frank J. McDonnell of Scranton, Pennsylvania, whose appointment was made as Attorney for this Estate over my protest by The First National Bank & Trust Company of Scranton, Pennsylvania.

The Supreme Court errored in upholding The First National Bank & Trust Company of Scranton, Pennsylvania, in their czar-like tactics as has Judge Brady in his decision, also.

Service was refused by Frank Green, Vice-President of The First National Bank & Trust Company of Scranton, Penna., Administrator, of praecipe supplied to me by The Supreme Court of Pennsylvania. Service of praecipe was also refused by Attorney Ernest Henkleman of the law firm of Warren, Hill, Henkleman & McMenamin, Attorneys for the Estate of Attorney William J. Fitzgerald.

Affidavits of their refusal to accept service has been filed with the Clerk of The Orphens Court of Lackawanna County by me.

The Legal Document presented in Orphens Court, Sept. 26th 1956 by Attorney Robert O'Brien, former law partner of Attorney William J. Fitzgerald, concerning the withdrawal of Attorney William J. Fitzgerald from the law firm of Fitzgerald, Kennedy, Eckersley & O'Brien is neither notorized or has it been witnessed by any person, dated November 15th 1954.

The Court may note that in the records forwarded by me that I am listed as a niece rather than the full sister of Attorney William J. Fitzgerald and sole immediate survivor.

The Supreme Court of Pennsylvania has errored in upholding the decision of Judge Brady, Lackawanna County, Orphens Court, when Judge Brady refused to allow me any redress concerning the refusal of Frank Hemilright, President of The First National Bank, to allow me to see any and all transactions of my brother, Attorney William J. Fitzgerald, with this said bank, although several thousands of dollars of insurance was envolved.

No one appeared in The Supreme Court of Pennsylvania for the First Naional Bank and Trust Company of Scranton, Pennsylvania, on April 16th 1957 to deny my charges. Therefore, the Supreme Court errored in upholding The Orphens Court of Lackawanna County, Scranton, Pennsylvania.

I have been very shabbily treated by the members of the law firm, which was established by my blood uncle, the late Judge John P. Kelly in 1883 and followed up by my late brother Attorney William J. Fitzgerald, and my first cousin, the late Attorney Edward J. Kelly, all of Scranton, Pennsylvania.

The present law firm has in no way co-operated with me in the settling of this Estate.

I am obliged to act as my own Attorney.

Kathleen Fitzgerald Walsh
Acting as own Attorney

317 West Market Street
Scranton, Pennsylvania

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U.S.
FILED
NOV 21 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

No. 553 October Term, 1957

In Re: Estate of William J. Fitzgerald, *Deceased*

Appeal of Kathleen Fitzgerald Walsh

MOTION TO DISMISS OR AFFIRM

Appeal From the Judgment of the Supreme Court of Pennsylvania to No. 206 January Term 1957 Reported in Volume 389, Pennsylvania Supreme Court Reports, page 197

Murdaugh Stuart Madden,
Attorney for the First National Bank and Trust Company of Scranton.

Of Counsel:

Warren, Hill, Henkelman & McMenamin
Scranton Electric Building
Scranton, Pennsylvania

IN THE

Supreme Court of the United States

No. 553 OCTOBER TERM, 1957

IN RE: ESTATE OF WILLIAM J. FITZGERALD, *Deceased*

APPEAL OF KATHLEEN FITZGERALD WALSH

MOTION TO DISMISS OR AFFIRM

Appeal From the Judgment of the Supreme Court of Pennsylvania to No. 206 January Term 1957 Reported in Volume 389, Pennsylvania Supreme Court Reports, page 197

MOTION TO DISMISS APPEAL OR AFFIRM JUDGMENT

The First National Bank and Trust Company of Scranton, Scranton, Pennsylvania, by its attorney, Murdaugh Stuart Madden, moves the Court to dismiss the appeal of Kathleen Fitzgerald Walsh from a Judgment of the Supreme Court of Pennsylvania, filed in this Court to No. 553 October Term 1957, or in the alternative to affirm said Judgment, pursuant to Rule 16(1)(a) and Rule 16(1)(b).

STATEMENT

This appears to be an appeal from a Judgment of the Supreme Court of Pennsylvania affirming the dismissal by the Auditing Judge of exception filed to the adjudication in the Estate of William J. Fitzgerald, deceased.

ARGUMENT

This motion should be granted for the following reasons:

(A) Under Rule 16(1)(a), the appeal is not within the jurisdiction of this Court because it was not taken in conformity to these rules in that

(1) Notice of Appeal has not been served upon the Appellee or its counsel as required by Rule 10(2) of this Court, and

(2) The Appellant has not served upon Appellee a statement as to jurisdiction as required by Rule 12(2).

(B) Under Rule 16(1)(b), this is an appeal from the judgment of a State Court, to wit: The Supreme Court of Pennsylvania, to No. 206 January Term 1957, reported in Volume 389 Pennsylvania Supreme Court Reports, page 197, and it does not present a substantial Federal question and the judgment rests on an adequate non-Federal basis, as will appear by reference to the document filed by the Appellant to the above Number and Term, said document being designated as an Appeal and consisting of three pages of printed matter.

WHEREFORE, the Appeal should be dismissed under Rules 16(1)(a) and 16(1)(b) of this Court and Section 1254 of the Judicial Code, 28 USCA, Section 1254, or in the alternative the Judgment of the Supreme

Court of Pennsylvania should be affirmed. Moreover, if the Court should consider and act upon this improvidently taken appeal as a petition for certiorari under the provisions of the Judicial Code, 28 USCA 2103, the same lack of a substantial Federal question would compel a denial of the petition.

MURDAUGH STUART MADDEN,
Attorney for the First National Bank and Trust Company of Scranton.

Of Counsel:

WARREN, HILL, HENKELMAN & MCMENAMIN
Scranton Electric Building
Scranton, Pennsylvania